

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DHR 05613**

ALEXANDER YOUTH NETWORK,)
)
Petitioner,)
)
v.)
)
SMOKY MOUNTAIN LOCAL)
MANAGED ENTITY/MANAGED CARE)
ORGANIZATION, as legally authorized)
contractor and agent for N.C. DEPARTMENT)
OF HEALTH AND HUMAN SERVICES,)
)
Respondent.)

SETTLEMENT AGREEMENT

This Settlement Agreement and Release (“Agreement”) is made and entered into effective as of the date of execution by and between Petitioner Alexander Youth Network (hereinafter “Petitioner” or “Alexander”), and Respondent Smoky Mountain Local Management Entity/Managed Care Organization (hereinafter “Respondent” or “Smoky”). The foregoing are at times referred to herein collectively as “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, Smoky is a Local Management Entity/Managed Care Organization (“LME/MCO”) as defined at N.C. Gen. Stat. § 122C-3(20c) and manages publicly-funded mental health, intellectual/developmental disability and substance abuse services for Smoky Health Plan members enrolled in the following 23 North Carolina counties: Alexander, Alleghany, Ashe, Avery, Buncombe, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Watauga, Wilkes, and Yancey Counties (“Smoky’s Catchment Area”) pursuant to contracts with the NC Department of Health and Human Services (the “Department”); and

WHEREAS, under its contract with the Department, Smoky is responsible for the identification and recovery of overpayments made to providers of behavioral health services contracted with Smoky; and

WHEREAS, Alexander entered into a contract with Smoky to provide mental health and behavioral health services with its principal place of business in Charlotte, North Carolina; and

WHEREAS, Alexander provides Intensive In-Home (“IIH”) services to Medicaid

recipients in Smoky's Catchment Area; and

WHEREAS, Smoky issued a Notice of Overpayment dated March 9, 2015, concerning investigation #1406040034DBOMP, notifying Alexander of Smoky's determination that Alexander had received Medicaid overpayments in the amount of \$121,310.97; and

WHEREAS, Alexander timely filed a Request for Reconsideration concerning the Smoky Notice of Overpayment; and

WHEREAS, Alexander provided additional documentation for review by Smoky; and

WHEREAS, Smoky's Program Integrity Reconsideration Panel met with representatives from Alexander on June 11, 2015 to review Alexander's reconsideration request; and

WHEREAS, Smoky's Program Integrity Reconsideration Panel issued a Notice of Decision dated July 2, 2015, which overturned or revised some of the initial findings and reduced the overpayment amount to \$83,871.97 ("Smoky's Notice of Decision"); and

WHEREAS, Alexander challenged Smoky's Notice of Decision and filed a Petition for Contested Case Hearing against Smoky in the NC Office of Administrative Hearings, and the matter was assigned case number 15 DHR 05613 (hereinafter "contested case 15 DHR 05613"); and

WHEREAS, the Parties desire to compromise and settle any and all existing, known, and potential disputes, claims, or rights between them, concerning the investigation as set forth above and contested case 15 DHR 05613; and

WHEREAS, the Parties have reached a compromise settlement resolving the differences between them on the disputes and potential disputes described herein, the terms and conditions of which are set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, for agreed upon consideration, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, for themselves and their predecessors, successors, managers, assigns, officers, directors, employees, and agents, agree as follows:

1. The settlement effected by this Agreement is a compromise of disputed claims, made to avoid the uncertainty and expense of potential litigation. The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, illegal conduct, nonconformity, error, other deficiency or legal position on the part of any Party. Any such alleged liability, illegal conduct, nonconformity, error, or other deficiency is expressly denied by the respective Parties.

2. Alexander will dismiss with prejudice its contested case 15 DHR 05613 against Smoky within three (3) business days after the complete execution of this Agreement.

3. Alexander agrees to pay to Smoky the sum of Thirty-Six Thousand Five Hundred Dollars (\$36,500.00) in full compromise and settlement of Smoky's Notice of Decision and contested case 15 DHR 05613. Petitioner owes no penalty or interest as long as it pays the agreed upon amount in accordance with the terms of this Agreement. Full and final payment in the amount of \$36,500.00 must be received by Smoky within seven (7) business days of the complete execution of this Agreement. Payment shall be made by wire transfer or in the form of a certified check payable to Smoky Mountain LME/MCO and delivered to the following address: 200 Ridgefield Court, Suite 206, Asheville, North Carolina 28806.

4. Smoky agrees to accept payment of \$36,500.00 in full compromise and settlement of Smoky's Notice of Decision and contested case 15 DHR 05613.

5. Smoky acknowledges that the alleged overpayments that were at issue are not based upon allegations by Smoky that Alexander engaged in fraud, willful misrepresentation, the filing of a false claim, or other illegal conduct.

6. Smoky will not conduct any further audits or investigations of Alexander, unless required to do so under the terms of Smoky's contract with DMA or the terms of Smoky's contract with Alexander in response to a credible allegation of fraud, waste, or abuse that is new and distinct from the facts alleged in any previous audit, investigation or complaint.

7. Each Party agrees that it will not disclose the terms of this Agreement to anyone (except to its attorneys, accountants, and employees who need to know the terms of this Agreement in order to carry out their job responsibilities, corporate affiliates parents and subsidiaries, all of whom agree to abide by the disclosure restrictions set forth in this paragraph), except in response to a request from CMS or DHHS or a request made under the NC Public Records Law.

8. The Parties represent and agree that they will not disparage or defame the other Party, or any person associated with the other Party, or make any public statements that may be considered detrimental to the good name or business representation of the other Party.

9. All attorneys' fees, costs and expenses related to all cases and disputes described herein shall be borne by each Party individually, and no claim for such fees, costs or expenses shall be made.

10. Each Party hereby releases the other Party, and its current and former officials, employees, agents and representatives, from any and all liability and causes of action that have arisen or may arise out of Smoky's Notice of Decision and contested case 15 DHR 05613.

11. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, understandings, or representations other than those set forth herein. This Agreement supersedes any and all other prior agreements and drafts regarding the subject matter hereof. This Agreement may not be

amended or modified except by a writing signed by both of the Parties or their duly authorized representatives.

12. This Agreement shall be construed and governed according to the laws of the State of North Carolina. If any provisions of this Agreement are held to be invalid or unenforceable by a court of competent jurisdiction, all other provisions shall nevertheless continue in full force and effect.

13. Each Party acknowledges that it has carefully read this Agreement, knows the contents thereof, and executes the Agreement voluntarily as its own act. Each Party further acknowledges that it has conferred to the extent that it has deemed appropriate with legal counsel regarding this Agreement prior to its execution.

14. This Agreement may be executed in counterparts, each of which shall be an original, and all of which taken together shall constitute one and the same instrument. The Parties may exchange electronic signatures on this Settlement Agreement or written signatures by facsimile or e-mail, which shall be acceptable and deemed binding as if originals.

15. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties.

16. This Agreement is binding on the Parties' predecessors, successors, parents, subsidiaries, managers, affiliates, assigns, officers, directors, employees, agents, and contractors.

17. This Agreement shall be effective upon the complete execution of this Agreement by all Parties.

THIS SETTLEMENT AGREEMENT is agreed to and executed under seal by the Parties hereto:

ALEXANDER YOUTH NETWORK

By:  DocuSigned by:
Jennifer Greene (SEAL)
DA582E22416474
Jennifer Greene, Vice President of
Performance Improvement

Date 1/4/2016

**SMOKY MOUNTAIN LOCAL MANAGEMENT
ENTITY/MANAGED CARE ORGANIZATION**

By:  DocuSigned by:
Brian Ingraham (SEAL)
B0C1D9288547A
Brian Ingraham, CEO/Area Director

Date 1/4/2016